

2005 Senate Bill 448

Date of enactment: **March 27, 2006**

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2005 WISCONSIN ACT 201

AN ACT to create 101.148 and 895.07 of the statutes; **relating to:** contractor notices, claims against certain contractors and suppliers of dwellings, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 101.148 of the statutes is created to read:

101.148 Contractor notices. (1) **DEFINITIONS.** In this section:

(a) “Consumer” means a person who enters into a written or oral contract with a contractor to construct or remodel a dwelling.

(b) “Contractor” means a person who enters into a written or oral contract with a consumer to construct or remodel a dwelling.

(c) “Deliver” means any of the following:

1. Depositing the document or written notice in the U.S. mail or with a commercial delivery service, addressed to the applicable person.

2. Giving the document or written notice personally to the applicable person.

(d) “Dwelling” means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. “Dwelling” includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(e) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not include maintenance or repair work.

(2) **NOTICE REQUIRED AT TIME OF CONTRACTING.** (a) Before entering into a written contract to construct or remodel a dwelling, or, if the parties enter into an oral contract, as soon as reasonably possible, but before commencing any work to construct or remodel a dwelling, the contractor shall deliver to the consumer a copy of the brochure prepared under s. 895.07 (13) and a notice worded substantially as follows:

NOTICE CONCERNING CONSTRUCTION DEFECTS

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer.

Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

(b) The notice required under par. (a) shall be conspicuous and in writing and may be included within the contract between the contractor and the consumer.

SECTION 2. 895.07 of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES 2003–04 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

895.07 Claims against contractors and suppliers.**(1) DEFINITIONS.** In this section:

(a) "Action" means a civil action or an arbitration under ch. 788.

(b) "Association" means a homeowner's association, condominium association under s. 703.02 (1m), unit owner's association, or a nonprofit corporation created to own and operate portions of a planned community that may assess unit owners for the costs incurred in the performance of the association's obligations.

(c) "Claim" means a request or demand to remedy a construction defect caused by a contractor or supplier related to the construction or remodeling of a dwelling.

(d) "Claimant" means the owner, tenant, or lessee of a dwelling, or an association, who has standing to sue a contractor or supplier regarding a construction defect.

(e) "Construction defect," in those cases when the contractor or supplier has provided a warranty to a consumer, means the definition of "defect" in the warranty. In all other cases, "construction defect" means a deficiency in the construction or remodeling of a dwelling that results from any of the following:

1. Defective material.
2. Violation of applicable codes.
3. Failure to follow accepted trade standards for workmanlike construction.

(f) "Consumer" means a person who enters into a written or oral contract with a contractor to construct or remodel a dwelling.

(g) "Contractor" means a person that enters into a written or oral contract with a consumer to construct or remodel a dwelling.

(h) "Dwelling" means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. "Dwelling" includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(i) "Remodel" means to alter or reconstruct a dwelling. "Remodel" does not include maintenance or repair work.

(j) "Serve" or "service" means personal service or delivery by certified mail, return receipt requested, to the last-known address of the addressee.

(k) "Supplier" means a person that manufactures or provides windows or doors for a dwelling.

(L) "Working day" means any day except Saturday, Sunday, and holidays designated in s. 230.35 (4) (a).

(2) NOTICE AND OPPORTUNITY TO REPAIR. (a) Before commencing an action against a contractor or supplier regarding a construction defect, a claimant shall do all of the following:

1. No later than 90 working days before commencing the action, deliver written notice to the contractor containing a description of the claim in sufficient detail to

explain the nature of the alleged defect and a description of the evidence that the claimant knows or possesses, including expert reports, that substantiates the nature and cause of the alleged construction defect.

2. Provide the contractor or supplier with the opportunity to repair or to remedy the alleged construction defect.

(b) Within 15 working days after the claimant serves notice of claim under par. (a), or within 25 working days if the contractor makes a claim for contribution from a supplier under sub. (7) (a), each contractor that has received the notice of claim shall serve on the claimant any of the following:

1. A written offer to repair or remedy the construction defect at no cost to the claimant. The offer shall include a description of any additional construction necessary to remedy the construction defect and a timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the contractor rejects the claim. The contractor shall state in the written response to the claim the reason for rejecting the claim and include a comprehensive description of all evidence the contractor knows or possesses, including expert reports, that substantiates the reason for rejecting the claim. The contractor shall also include in the written response to the claim any settlement offer received from a supplier.

5. A proposal for inspection of the dwelling under par. (c).

(c) If a proposal for inspection is made under par. (b), the claimant shall, within 15 working days of receiving the contractor's proposal, provide the contractor and any supplier on whom a contribution claim has been made and its agents, experts, and consultants reasonable access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the contractor shall deliver the claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 5 working days before commencement of the testing and shall, after completion of the testing, return the dwelling to its pre-testing condition within a reasonable time after completion of the testing, at the contractor's expense. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to evaluate fully the nature, cause, and extent of the construction defect, the contractor shall deliver notice to the claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and

the claimant shall provide reasonable access to the dwelling. If a claim is asserted on behalf of the owners of multiple dwellings, then the contractor shall be entitled to inspect each of the dwellings subject to the claim. The claimant shall either provide a specific day for the inspection upon reasonable notice for an inspection or require the contractor to request in writing a date for the inspection, at least 3 working days before the inspection.

(d) Within 10 working days following completion of the inspection and testing under par. (c), the contractor shall serve on the claimant a notice that includes any of the offers or statements under par. (b) 1. to 4.

(e) If the claimant rejects a settlement offer made by the contractor, the claimant shall, within 15 working days after receiving the offer, serve written notice of that rejection to the contractor. The notice shall include the reasons for the claimant's rejection of the contractor's offer. If the claimant believes that the settlement offer omits reference to any portion of the claim, or was unreasonable, the claimant's written notice shall include those items that the claimant believes were omitted and set forth the reasons why the claimant believes the settlement offer is unreasonable. The contractor shall deliver the claimant's response to a supplier upon whom a contribution claim has been made.

(f) Upon receipt of a claimant's rejection and the reasons for the rejection, the contractor shall, within 5 working days after receiving the rejection, serve the claimant a written supplemental offer to repair or to remedy the construction defect or serve on the claimant written notice that no additional offer will be made.

(g) If the claimant rejects the supplemental offer made by the contractor under par. (f) to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor within 15 working days after receipt of the supplemental offer. The notice shall include the reasons for the claimant's rejection of the contractor's supplemental settlement offer. If the claimant believes the contractor's supplemental settlement offer is unreasonable, the claimant shall set forth the reasons why the claimant believes the supplemental settlement offer is unreasonable. If the contractor declines to make a supplemental offer, or if the claimant rejects the supplemental offer, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

(h) If a claimant accepts any offer made under this subsection, and the contractor or supplier does not proceed to repair or remedy the construction defect under the terms of the offer or within the agreed upon timetable, the claimant may bring an action against the contractor or supplier for the claim described in the notice of claim without further notice.

(i) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its agents, experts, and consultants reasonable access to the dwelling to perform and complete the construction by the timetable stated in the settlement offer.

(j) If a claimant receives a written statement that the contractor rejects the claim, or if the contractor does not respond to the claimant's notice, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

(k) If a claimant commences an action against a supplier and the supplier has not been provided notice of the claim by the contractor and an opportunity to repair or remedy the construction defect described in the claim as provided under to sub. (7), the court or arbitrator shall dismiss without prejudice or stay the action until the claimant serves the supplier with a copy of the notice of claim and provides the supplier an opportunity to repair or remedy the construction defect in the same manner as provided a contractor under this section.

(3) ACTION; DISMISSAL WITHOUT PREJUDICE. If the claimant commences an action but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier establishes that the claimant was provided the notice and brochure under s. 101.148 (2), the circuit court or arbitrator shall dismiss the action without prejudice. If the claimant commences an action but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier cannot establish that the notice and brochure was delivered to the claimant under s. 101.148 (2), the circuit court or arbitrator shall stay the action and order the parties to comply with the requirements of sub. (2) (a) and s. 101.148 (2). Before commencing an action against a supplier seeking contribution for a claim that a claimant has served on a contractor, the contractor shall serve the supplier with a notice of contribution claim under sub. (7). If the contractor commences an action against a supplier but fails to serve the notice of contribution claim, the circuit court or arbitrator shall stay the action until the contractor has complied with the requirements of this subsection and sub. (7).

(4) WARRANTY TERMS. The claimant and contractor or supplier are bound by any contractor or supplier warranty terms pertaining to products or services supplied for the dwelling.

(5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR. A construction defect that is discovered after an initial claim or contribution claim notice has been provided may not be alleged in an action until the claimant or contractor has served the contractor or supplier written notice of the new claim or contribution claim regarding the alleged new construction defect. The contractor or supplier shall have an opportunity to

resolve the notice of the new claim or contribution claim in the manner provided in subs. (2) and (7).

(6) ACTION OF CONTRACTOR OR SUPPLIER. In any action initiated by a contractor or supplier in which a claimant raises an affirmative defense or counterclaim alleging a construction defect, the claimant is not required to comply with this section.

(7) CONTRIBUTION. (a) Before commencing an action seeking contribution from a supplier for a claim that a claimant makes against the contractor, the contractor shall serve the supplier with a written notice of the claimant's claim and a contribution claim within 5 working days after the contractor's receipt of the claim, except that a contractor may make a contribution claim later than 5 days after the contractor's receipt of the initial claim if the contractor has not done any of the following:

1. Taken any action to repair the defect.
2. Performed destructive testing.
3. Authorized the claimant to take any action to repair the defect.
4. Interfered materially with or altered the property that is the subject of the claim.
5. Materially precluded a supplier's ability to offer to remedy the defect by making repairs.

(b) Before commencing an action against a supplier, a contractor shall provide the supplier with the opportunity to respond to the contribution claim and repair the alleged construction defect under this section. The notice of contribution claim shall state that the contractor asserts a construction defect claim. The notice of contribution claim shall describe the contribution claim in sufficient detail to explain the nature of the alleged construction defect and shall offer the opportunity to correct the construction defect. The contractor shall include in the notice of claim a description of the alleged construction defect and include a comprehensive description of all evidence that the contractor knows or possesses, including expert reports, that substantiates the nature and cause of the alleged construction defect.

(c) Within 15 working days after a supplier has received notice that a contractor is seeking contribution under par. (a), the supplier shall serve the contractor with any of the following:

1. A written offer to remedy fully or partially the construction defect at no cost to the claimant. The offer shall include a description of any additional construction necessary to remedy the construction defect and a timetable for the completion of the construction.
2. A written offer to settle the claim by monetary payment.
3. A written offer including a combination of repairs and monetary payment.
4. A written statement that the supplier rejects the claim. The supplier shall state in the written response to the claim the reason for rejecting the claim and include a comprehensive description of all evidence the supplier

knows or possesses, including expert reports, that substantiates the reason for rejecting the claim.

5. A proposal for the inspection of the dwelling, following the procedures under par. (e).

(d) The contractor shall forward the supplier's response to the claimant. The supplier and contractor shall use their best efforts to coordinate their responses to claims and contribution claims.

(e) If a supplier proposes to inspect the dwelling that is the subject of the contribution claim, the contractor and claimant shall, within 15 working days after receiving the supplier's proposal, provide the supplier and its agents, experts, and consultants reasonable access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the supplier shall give the contractor and claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 5 working days before commencement of the testing and shall, after completion of the testing, return the dwelling to its pre-testing condition within a reasonable time after completion of the testing, at the supplier's expense. If any inspection or testing reveals a condition that requires additional testing to allow the supplier to evaluate fully the nature, cause, and extent of the construction defect, the supplier shall provide notice to the contractor and claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the contractor and claimant shall provide reasonable access to the dwelling. If a claim is asserted on behalf of the contractor of multiple dwellings, then the supplier shall be entitled to inspect each of the dwellings. The contractor and claimant shall provide a specific day for the inspection upon reasonable notice for an inspection or require the supplier to request in writing a date for the inspection, at least 3 working days before the inspection.

(f) Within 10 working days following completion of the inspection and testing under par. (e), the supplier shall serve on the contractor a notice that includes any of the offers or statements under par. (c) 1. to 4.

(g) If the contractor rejects a settlement offer made by the supplier, the contractor shall, within 15 working days after receiving the offer, send written notice of that rejection to the supplier. The notice shall include the reasons for the contractor's rejection of the supplier's offer. If the contractor believes that the settlement offer omits reference to any portion of the claim, or was unreasonable, the contractor's written notice shall include those items that the contractor believes were omitted and set forth the reasons why the contractor believes the settlement offer is unreasonable.

(h) Upon receipt of a contractor's rejection and the reasons for the rejection, the supplier shall, within 5 working days of receiving the rejection, make a supplemental offer of repair or monetary payment to the contractor or serve on the contractor written notice that no additional offer will be made.

(i) If the contractor rejects the supplemental offer made by the supplier to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the contractor shall, within 15 working days after receiving the offer, serve written notice of the contractor's rejection on the supplier. The notice shall include the reasons for the contractor's rejection of the supplier's supplemental settlement offer. If the contractor believes the supplier's supplemental settlement offer is unreasonable, the contractor shall set forth the reasons why the contractor believes the supplemental settlement offer is unreasonable. If supplier declines to make a supplemental offer, or if the contractor rejects the supplemental offer, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice.

(j) If a contractor accepts any offer made under this subsection, and the supplier does not proceed to make the monetary payment or remedy the construction defect within the agreed upon timetable, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice. The contractor may also file the supplier's offer and contractor's acceptance in the circuit court action, and the offer and acceptance create a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court.

(k) If a contractor accepts a supplier's offer to repair a construction defect described in a notice of claim, the contractor, when appropriate, and the claimant shall provide the supplier and its agents, experts, and consultants reasonable access to the dwelling to perform and complete the construction by the timetable stated in the settlement offer.

(L) If a contractor receives a written statement that the supplier rejects the claim, or if the supplier does not respond to the contractor's notice, the contractor may

bring an action against the supplier for the claim described in the notice of claim without further notice.

(m) A contractor who is seeking contribution from a supplier and who elects to inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the inspection date and dwelling address, and whether destructive testing is contemplated, at least 5 working days before the inspection.

(8) **FAILURE TO RESPOND TO NOTICE.** If a person fails to timely respond to any notice served in a manner required under this section, then any offer made in that notice is rejected.

(9) **LIMITATION PERIOD.** If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitation period would otherwise expire, the limitation period is tolled pending completion of the notice of claim process described in this section. This subsection shall not be construed to revive a limitation period that has expired before the date on which a claimant's written notice of claim is served or extend any applicable statute of repose.

(10) **ALTERATION OF PROCEDURE.** After service of the initial notice of claim and initial contribution claim, a claimant, a contractor, and a supplier may, by written mutual agreement, alter the procedure for the notice of claim process described in this section.

(11) **APPLICATION TO OTHERS.** This section does not apply to a contractor's or supplier's right to seek contribution, indemnity, or recovery against any party other than a supplier for a claim made against a contractor or supplier.

(12) **HOMEOWNER REPAIRS.** Without giving notice under this section, a homeowner may make immediate repairs to a dwelling to protect the health or safety of its occupants.

(13) **BROCHURE.** The department of commerce shall prepare a brochure explaining the process under this section and shall provide that brochure to contractors.

SECTION 3. Initial applicability.

(1) This act first applies to actions commenced on the effective date of this subsection.

SECTION 4. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.